

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI, INC.,
OPENAI LP, OPENAI GP, LLC, OPENAI, LLC,
OPENAI OPCO LLC, OPENAI GLOBAL LLC,
OAI CORPORATION, LLC, and OPENAI
HOLDINGS, LLC,

Defendants.

Civil Action No. 1:23-cv-11195-SHS

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
LEAVE TO FILE SECOND
AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15, Plaintiff The New York Times Company (“The Times”) seeks leave to file its Second Amended Complaint (“SAC”). A redline of the SAC is attached as Exhibit A to the concurrently filed Declaration of Ian Crosby.

As indicated in Exhibit A, The Times’s substantive amendments pertain to bringing its complaint into compliance with Judge Stein’s April 4, 2025, Partial Motion to Dismiss Order. *See* Dkt. 514. Specifically, though The Times maintains that its common law unfair competition by misappropriation claim was adequately pleaded and legally sufficient, it recognizes that under the Court’s Order, its further recourse is an appeal. Moreover, in light of the discovery provided to date, The Times will not amend (1) its 17 U.S.C. § 1202(b)(3) claim against Defendants or (2) its 17 U.S.C. § 1202(b)(1) claim against Microsoft. Finally, The Times has amended its 17 U.S.C. § 1202(b)(1) claim against OpenAI to mirror “the *Daily News* and *CIR* complaints’ detailed allegations regarding OpenAI’s removal of CMI during the process of developing its LLM training datasets”—in light of this Court’s recent dismissal of The Times’s claim without prejudice. Dkt.

514 at 27. Under the liberal amendment standards of Rule 15, The Times should be allowed leave to amend its complaint.

“Under Rule 15, leave to amend should be given ‘absent evidence of undue delay, bad faith or dilatory motive on the part of the movant, undue prejudice to the opposing party, or futility.’” *Ap-Fonden v. Goldman Sachs Grp., Inc.*, 2023 WL 4865617, at *4 (S.D.N.Y. July 31, 2023) (quoting *Monahan v. N.Y.C. Dep’t of Corrections*, 214 F.3d 275, 283 (2d Cir. 2000)). “The party opposing the amendment has the burden of demonstrating any bad faith, prejudice of the proposed amendment, or futility of the proposed amendment.” *Id.* The Times’s motion is timely under this Court’s scheduling order of December 6, 2024, which set a deadline of April 15, 2025, for amending pleadings. Furthermore, The Times moved to amend promptly after Judge Stein’s April 4, 2025, opinion issued. And, the proposed amendment does not assert any new causes of action. Instead, The Times is simply supplementing its existing 17 U.S.C. § 1202(b)(1) claim—which OpenAI has been aware of since the inception of The Times’s complaint. Finally, Defendants cannot assert that The Times’s amendment is futile, given that this Court found identical allegations by the Daily News and CIR plaintiffs—in support of their 17 U.S.C. § 1202(b)(1) claims against OpenAI—to survive OpenAI’s motion to dismiss.

For the foregoing reasons, The Times respectfully requests that the Court grant its motion for leave to file a Second Amended Complaint. The Times also requests that the Court allow it to incorporate the Exhibits at ECF Nos. 170–202 by reference into its Second Amended Complaint.

Dated: April 15, 2025

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